

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
AND
NESTLE WATERS NORTH AMERICA INC
dba READY REFRESH BY NESTLE (“Contractor”)
FOR
DRINKING WATER DELIVERY SERVICE
Contract Number: MA 8200 NA190000087**

The City accepts the Contractor’s Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between Nestle Waters North America Inc dba Ready Refresh by Nestle having offices at 16420 N IH-35, Austin, TX 78728-3908 and the City, a home-rule municipality incorporated by the State of Texas and is effective as of the date executed by the City (“Effective Date”).

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number IFB 8200 SBR1000.

1.1 This Contract is composed of the following documents:

1.1.1 This Contract

1.1.2 The City’s Solicitation, Invitation for Bid (IFB), 8200 SBR1000 including all documents incorporated by reference

1.1.3 Nestle Waters North America Inc dba Ready Refresh by Nestle Offer, dated January 25, 2019, including subsequent clarifications

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

1.2.1 This Contract

1.2.2 The City’s Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference

1.2.3 The Contractor’s Offer as referenced in Section 1.1.3, including subsequent clarifications.

1.3 Term of Contract.

1.3.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of twenty-four (24) months. The Contract may be extended beyond the initial term for up to two (2) additional twelve (12) month periods at the City’s sole option.

1.3.1.1 If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.

1.3.1.2 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of

time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under the Contract (not to exceed 120 calendar days unless mutually agreed to in writing).

1.3.1.3 This is a 24-month Contract. Prices are firm for the first twelve (12) months.

1.4 **Compensation.** The Contractor shall be paid a total Not-to-Exceed amount of \$245,150 for the initial Contract term and \$122,575 for each extension option as indicated in the Bid Sheet, IFB Section 0600. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

1.5 **Quantity of Work.** There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

1.6 **Clarifications and Additional Agreements.** The following are incorporated into the Contract.

Nestle Waters North America Inc dba Ready Refresh by Nestle will:

1.6.1 Honor the unit price quoted on the Section 0600-Bid Sheet and will not charge separately for delivery fees.

1.6.2 Accept all terms and conditions in the Supplemental Purchasing Provisions, Section 0400

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

**Nestle Waters North America Inc dba
Ready Refresh by Nestle**

CITY OF AUSTIN

MARK Miller
Printed Name of Authorized Person

Sarah Ramos
Printed Name of Authorized Person

MARK Miller
Signature

Sarah Ramos
Signature

KADM
Title:

Procurement Specialist II
Title:

5-8-19
Date:

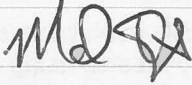
5.15.19
Date:

AUSTIN



CONVENTION CENTER

DEPARTMENT

Policy	Ongoing Purchasing and Waste Policy		
Effective Date	February 1, 2018	Revision No.	0
Approval		Date	1/25/18
Title	Mark Tester, Director	Effective Period	Policy is reviewed annually and in effect until rescinded.

Scope

This plan applies to all purchases entering and all ongoing waste leaving the building. This policy will be consulted prior to purchasing materials and arranging for waste disposal.

Overview

This policy covers the following:

Purchases:

Ongoing purchases:

- The five most purchased product categories based on total annual purchases.
- Paper, toner cartridges, binders, batteries, and desk accessories.
- Lamps (indoor and outdoor, hard-wired and portable fixtures)
- Food (required for EBOM Schools, Hospitality and Multifamily only)

Durable goods purchases:

- Office equipment, appliances, and audiovisual equipment

Other electric powered equipment

Waste:

- all ongoing waste, including the ongoing purchasing categories listed above
- office equipment, appliances, audiovisual equipment
- electric powered equipment
- hazardous waste, such as mercury-containing lamps and batteries

Applies To: ☒ Austin Convention Center ☒ Palmer Events Center

ACCD Employees and Subcontractors; and all purchasing by ACCD

Definitions, Abbreviations, Acronyms & Symbols

ACCD	Austin Convention Center Department
ARB or CARB	The California Air Resources Board
Bio-based materials	Bio-based products must meet the Sustainable Agriculture Network's Sustainable Agriculture Standard. Bio-based raw materials must be tested using ASTM Test Method D6866 and be legally harvested, as defined by the exporting and receiving country. Exclude hide products, such as leather and other animal skin material.
COA	City of Austin
Energy Star	Government-backed program helping businesses and individuals protect the environment through superior energy efficiency.
EPA	United States Environmental Protection Agency
EPEAT	The definitive global registry for greener electronics, covering the most products from the broadest range of manufacturers.
FIFRA	Federal Insecticide, Fungicide and Rodenticide Act
FSC	Forest Stewardship Council
Green Purchasing	Purchasing materials, products and labor in a manner reflecting fiscal responsibility, social equity, community and environmental stewardship. Green Purchasing is also referred to as Sustainable Purchasing.
Green Seal™	Green Seal™ is an independent, non-profit organization striving to achieve a healthier and cleaner environment by identifying and promoting products and services causing less toxic pollution and waste, conserving resources and habitats and minimizing global warming and ozone depletion. Green Seal™ has no financial interest in the products it certifies or recommends, or in any manufacturer or company. Green Seal's™ evaluations are based on state-of-the-art science and information using internationally recognized methods and procedures.
GS-37	Green Seal™ standards establishes environmental requirements for industrial and institutional general-purpose, bathroom, glass and carpet cleaners, based on reducing human toxicity, aquatic toxicity and smog production potential. It includes products requiring to be registered under FIFRA.
IAQ	Indoor Air Quality refers to air quality within and around buildings and structures, relating to health and comfort of building occupants.
Performance	The efficacy of a product, material or service to accomplish its intended task or job.
RCRA	Resource Conservation Recovery Act of 1976

Definitions, Abbreviations, Acronyms & Symbols *(continued)*

Recycled Content Product	A product containing a minimum of ten percent (10%) post-consumer or twenty percent (20%) post-industrial recycled materials, except in those cases where the EPA has adopted procurement guidelines under the RCRA. In those cases, the minimum content of recycled material must not be less than specified in the most current adopted issue of those guidelines.
Recyclable Product	A product or package made from a material for which curbside or drop-off collection systems are in place for a majority of City residents or businesses, to divert from City solid waste for use as a raw material in the manufacture of another product or the reuse of the same product.
Reuse	A strategy to return materials to active use in the same or a related capacity.
Sustainable Product	A product achieving performance objectives while respecting the organization's values and balancing of environmental stewardship, social equity, fiscal responsibility and community enhancement.
Sustainable Purchasing	Purchasing materials, products and labor in a manner reflecting fiscal responsibility, social equity, community and environmental stewardship. Sustainable Purchasing is also referred to as Green Purchasing.

Roles & Responsibilities

ACCD Management	Updates ACCD Policies & Procedures Manual to include the policy.
Employee	Abides by policy and completes required training, if applicable.
Managers and Supervisors	Ensures Unit employees abide by policy and completes required training, if applicable. Assists in information gathering for tracking, reporting and evaluating the sustainable purchasing program, as requested.
Sustainability Coordinator	<p>Responsibilities include:</p> <ul style="list-style-type: none"> • Educating employees on the policy and its objectives. • Educating subcontractors and vendors on the policy. • Implementing activities identified in the policy. • Reviewing, researching and updating policy goals to increase the number of recyclable products and/or products made of recycled content used by ACCD. • Reviewing policy annually for updates, compliance, efficiency and effectiveness.
Buyer Associate	<p>Responsibilities include:</p> <ul style="list-style-type: none"> • Adhering to all COA policies, procedures and guidelines pertaining to purchasing. • Abiding by policy pertaining to sustainable purchasing. • Ensuring all purchasing requests are completed and contain the sustainable component information. <p><i>Note:</i> A valid business purpose for not purchasing a sustainable product is required on the request.</p>

ACCD Responsibilities

ACCD is required to:

Develop, implement and maintain a sustainable purchasing policy.

Abide by the following:

- COA Section 0300 Standard Purchase Terms and Conditions November 2013
- COA Minority and Women-Owned Business Enterprise (MBE/WBE) Procurement Program, City Code Title 2 – Administration, Chapters 2-9A, 2-9B, 2-9C and 2-9D
- COA City Code Chapter 2-7, Article 6, Anti-Lobbying and Procurement
- State of Texas Local Government Code Title 5, Chapter 176: public disclosure of information from person doing business or seeking to do business with the COA about their affiliations, business and financial relationships with local government officers
- State of Texas Local Government Code, Chapter 252: Purchasing and Contracting Authority of Municipalities
- COA City Code Article VII, Finance of the Austin City Charter
- COA No Gift Policy
- COA FSD Purchasing Office Operating Policies and Procedures Manual

Promote, when practical, its vendors, subcontractors and consultants to use recycled-content paper of at least thirty-five percent (35%) post-consumer waste on all documents submitted to ACCD and to use other environmental preferable sustainable products as appropriate.

Use, when feasible, products performing and having the least damaging and most beneficial environmental impact, including new environmentally preferable products, reusable products, recycled content and recycled products.

ACCD Goals

<u>Category</u>	<u>Goal</u>	<u>Performance measurement unit</u>
Purchases: Ongoing consumables	75% meet sustainability criteria	Cost
Purchases: Durable goods and electric powered equipment	90% meet sustainability criteria	Cost
Purchases: Lamps	90% of lamps have 60 picograms of mercury per lumen-hour or less	Number of lamps
Waste: Ongoing consumables	75% diverted from landfill	volume
Waste: Durable goods and electric-powered equipment	100% diverted from landfill	weight
Batteries and mercury containing lamps	100% diverted from landfill and disposed according to procedures described below	weight

Sustainability Product Purchasing Factors

To meet ACCD policy goals, the following factors should be considered when purchasing products:

Environmental Factors and LCA of:

- Pollutant releases, especially PBT's
- Waste generation
- Greenhouse gas emissions
- Recycled content
- Energy consumption
- Depletion of natural resources
- Potential impact on human health and environment

Social Equity Factors, including but not limited to:

- Use of local businesses
- Use of local businesses, in compliance with the COA's Small and Minority Business Resources (SMBR), Minority and Women-Owned Business Enterprise (MBE/WBE) Procurement Program
- Ergonomic and human health impacts

Fiscal Factors, including but not limited to:

- Best value
- Leveraging buying power
- Impact on employee time and labor
- Long-term financial or market changes
- Technological advances in a rapidly changing market

Procedures and strategies for implementation

A sustainable product must be purchased if the product can perform the function equally or is an enhancement to a non-sustainable product. The cost of the sustainable product should reasonably compare to the cost of a non-sustainable product.

Ongoing consumable purchases shall meet the following criteria:

- **Postconsumer recycled content.** The content of purchases must meet or exceed the levels listed in the U.S. Environmental Protection Agency Comprehensive Procurement Guidelines. Products not covered by the Guidelines can get credit for their recycled content with no minimum. (<http://www.epa.gov/epawaste/conserves/tools/cpg/>)
- **Extended use.** Batteries must be rechargeable. Toner cartridges for laser printers must be remanufactured.
- **Bio-based materials.** Bio-based products must meet the Sustainable Agriculture Network's Sustainable Agriculture Standard. Bio-based raw materials must be tested using ASTM Test Method D6866 and be legally harvested, as defined by the exporting and receiving country. Exclude hide products, such as leather and other animal skin material.
- **Paper and wood products.** Paper and wood products must be certified by the Forest Stewardship Council or USGBC-approved equivalent.

Procedures and strategies for implementation (*continued*)

Electric-powered equipment purchases shall meet the following criteria:

- **EPEAT rating.** The equipment must have a silver Electronic Product Environmental Assessment Tool (EPEAT) rating or better.
- **ENERGY STAR rating.** If the equipment does not yet fall under the EPEAT rating systems, it must be ENERGY STAR® qualified or performance equivalent for projects outside the U.S.

Purchased lamps shall have 60 picograms of mercury per lumen-hour or less. The lumens value will be based on the mean lumen output (design or actual). The rated life is the value based on a three-hour instant start.

Building occupants are educated on the following:

- Storage locations for recyclable ongoing consumables materials
- Storage locations for used batteries
- Storage locations for durable goods waste

Product Standards

- Implement pilot-testing of preferred environmental sustainable products.
- Consult with other Departments regarding technical and performance specifications of products used or the establishment of a product's performance specifications.

Strategies

- Revise existing procurement policies and specifications to facilitate use of preferred environmental sustainable products.
- Consider Sustainability Product Purchasing Factors when evaluating responses from prospective bidders in the procurement of goods and services.
- Utilize Buyer Associates expertise to implement pilot-testing of preferred environmental sustainable products and use of LCA methods and tools, when appropriate, in determining total cost impacts.

Quality Assurance/Quality Control Processes

The responsible party will evaluate the purchasing and waste activity on a quarterly basis to evaluate progress towards the implementation goals. If any purchases or waste is not being recorded properly, the responsible party will inform the appropriate individuals to ensure that activities are recorded moving forward. If any implementation goals are not being met, the responsible party will investigate the situation and will work with the individuals purchasing materials and building occupants disposing of waste to resolve the issue. The responsible party will evaluate whether updates are necessary to the policy or the purchasing or waste processes in order to achieve the implementation goals.

References & Documentation

COA City Code, Article VII, Finance of the Austin City Charter
COA City Code Chapter 2-7, Article 6, Anti-lobbying and Procurement
State of Texas Local Government Code Title 5, Chapter 176: public disclosure of information from person doing business or seeking to do business with the COA about their affiliations, business and financial relationships with local government officers
State of Texas Local Government Code, Chapter 252: Purchasing and Contracting Authority of Municipalities
COA Minority and Women-Owned Business Enterprise (MBE/WBE) Procurement Program, City Code Title 2 – Administration, Chapters 2-9A, 2-9B, 2-9C and 2-9D
COA No Gift Policy
COA Section 0300 Standard Purchase Terms and Conditions November 2013
LEED-EB Material and Resources Prerequisite 2
COA FSD Purchasing Office Operating Policies and Procedures Manual
LEED-EB Material and Resources Credits 2-4 & 6
LEED-EB Reference Guide, Second Edition, 2008

Questions & Comments

<p>We are interested in your questions or comments on implementation, usability and any other aspects of this policy.</p> <p>Call or email your comments to:</p>	Email	Extension
	trisha.tatro@austintexas.gov	x4218
	bryan.helford@austintexas.gov	x4311
	sharon.patterson@austintexas.gov	x4355
	camala.jones@austintexas.gov	x4309

Attachment B – Delivery Locations

Department	Building	Address
Austin Resource Recovery	Hornsby Bend	2210 FM 973, Austin, TX 78725
Austin Fire Department	Wellness Center	517 S Pleasant Valley Rd, Austin, TX 78741
	Austin Fire Investigations	3002 Guadalupe St, Austin, TX 78705
	Austin Fire Dept.	4201 Ed Bluestein Blvd, Warehouse 1st Floor, Austin, TX 78721
Austin-Travis County Emergency Medical Services	Warehouse	Austin Travis County EMS, 4201 Ed Bluestein Dock E, Austin TX 78721
Austin Convention Center	Austin Convention Center	500 E Cesar Chavez St, Austin, Texas 78701
	Palmer Events Center	900 Barton Springs Road, Austin, Texas 78704
Public Works Department	Public Works/Street and Bridge Operations - 2 trailers	4411-A Meinardus Drive, Austin, TX 78744
	Public Works/Street and Bridge Operations - 4 trailers	6301 Harold Court, Site C, Austin, TX 78721
	Public Works Department/Various Sections - 4 offices	150 E. Riverside Drive, Austin, TX 78704
Aviation Department	Warehouse	9400 A Freight Lane, Austin, Texas 78719
	Information Systems (IT)	9400 E Freight Lane, Austin Texas 78719
	Staging Area for Taxi's	2731 Spirit of Texas, Austin, Texas 78719
	Communications/Dispatch	3011 Employee Ave. Austin, Texas 78719
	Workout Room	3011 Employee Ave. Austin, Texas 78719
	Information Systems	3011 Employee Ave. Austin, Texas 78719
	Administration/Mezzanine Terminal	3600 Presidential Blvd. Austin, Texas 78719
	Information Booth, Bag Claim area	3600 Presidential Blvd. Austin, Texas 78719
	Facilities/Security ID	3600 Presidential Blvd. Austin, Texas 78719
	TaxiCab Control Booth	3600 Presidential Blvd. Austin, Texas 78719
	Airport Maintenance Building	3601 Bergstrom Drive, Austin, Texas 78719 Room #151 & #174
	ABIA Fleet Services	3819 Bergstrom Drive, Austin, Texas 78719
Asset Management Services	Asset Management Services	3601 Bergstrom Drive Austin, Texas 78719
	GTSA Grounds Transportation	2901 Employee Ave. Austin, Texas 78719

City reserves the right to add or remove additional departments or locations as needed to the resulting contract without an amendment.

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: Nestle Waters North America Inc.

Company Address: 16420 N Hwy #35 Austin

City, State, Zip: Austin, TX 78728

Vendor Registration No. _____

Printed Name of Officer or Authorized Representative: Mark Miller

Title: Key Account Development Manager

Signature of Officer or Authorized Representative: 

Date: 1-25-2019

Email Address: mark.miller@waters.nestle.com

Phone Number: 512-845-0909

*** Completed Bid Sheet, section 0600 must be submitted with this signed Offer sheet to be considered for award**

**CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City

**CITY OF AUSTIN
PURCHASING OFFICE
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harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

13. PAYMENT:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

- 14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

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No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. AUDITS and RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
 - i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
 - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
 - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

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18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

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20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

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required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

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30. DELAYS:

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

- A. Definitions:
 - i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
 - ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

A. General Requirements.

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

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City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

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Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

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39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

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48. DISPUTE RESOLUTION:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

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Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

55. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

A. Definitions. As used in this paragraph –

i. "Component" means an article, material, or supply incorporated directly into an end product.

ii. "Cost of components" means -

- (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
- (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.

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- iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

56. PROHIBITION OF BOYCOTT ISRAEL VERIFICATION

Pursuant to Texas Government Code §2270.002, the City is prohibited from contracting with any "company" for goods or services unless the following verification is included in this **Contract**.

- A. For the purposes of this Section only, the terms "company" and "boycott Israel" have the meaning assigned by Texas Government Code §2270.001.
- B. If the **Principal Artist** qualifies as a "company", then the **Principal Artist** verifies that he:
 - i. does not "boycott Israel"; and
 - ii. will not "boycott Israel" during the term of this **Contract**.
- C. The **Principal Artist's** obligations under this Section, if any exist, will automatically cease or be reduced to the extent that the requirements of Texas Government Code Chapter 2270 are subsequently repealed, reduced, or declared unenforceable or invalid in whole or in part by any court or tribunal of competent jurisdiction or by the Texas Attorney General, without any further impact on the validity or continuity of this Contract.

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The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to Sarah Ramos via email to: Sarah.Ramos@austintexas.gov within 5 business days prior to the solicitation close date.

2. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage

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- (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
 - iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
 - C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.
3. **TERM OF CONTRACT:**
- A. The Contract shall be in effect for an initial term of twenty-four (24) months and may be extended thereafter for up to two (2) additional twelve (12) month periods at the City's sole option. If the City exercises any extension option, all terms, conditions, and provisions of the Contract shall remain in effect for that extension period, subject only to any economic price adjustment otherwise allowed under the Contract.
 - B. Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the deliverables due under this Contract. Any hold over period will not exceed 120 calendar days unless mutually agreed on by both parties in writing.
 - C. Upon written notice to the Contractor from the City's Purchasing Officer or his designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
 - D. Prices are firm and fixed for the first twelve (12) months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.
4. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.
5. **DELIVERY REQUIREMENTS:**
- A. All orders must be shipped complete unless arrangements for partial shipments are made in advance and approved by the Contract Manager or designee.
 - B. The Contractor, at time of delivery, shall submit a delivery receipt copy to the designated City representatives at each location.
 - C. A designated City representative, upon delivery, must sign the delivery receipt for all water deliveries.

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- D. The Contractor shall confirm the quantity to be shipped on all orders within 48-business hours of notification by phone from the City.
- E. Unless requested by the City, deliveries shall not be made on City-recognized legal holidays (see paragraph 51 in Section 0300).

6. INVOICES and PAYMENT: (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.
- B. Invoices shall be itemized and include signed delivery receipt copy for each City Department. Submitted delivery receipts shall include an authorized Contract Manager signature. The City reserves the right to reject any unsigned delivery receipt.
- C. Invoices shall be mailed or emailed to each department's listed billing address or e-mail address listed on their delivery order (DO) or as provided by the Department's Contract Manager.
- D. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

7. RECYCLED PRODUCTS:

- A. The City prefers that Offerors offer products that contain recycled materials. When a recycled product is offered by the Offeror, the Offeror must state in their Offer the percentage of the product that is recycled and must include a list of the recycled materials that are contained in the product.
- B. The recycled content of paper products offered to the City shall be in accordance with the Federal Environmental Protection Agency's Recycled Product Procurement Guidelines. These guidelines are available at <http://www.epa.gov/cpg/>.
- C. Contract award for paper products will be made for recycled products unless the cost is more than 10% above the lowest price for non-recycled paper products as required in the City's Comprehensive Recycling Resolution.

8. PUBLISHED PRICE LISTS:

- A. Offerors may quote using published price lists in the following ways:
 - i. Offerors may quote one discount from a Published Price List for all offered items to be covered in the Contract. The discount must remain firm during the life of the Contract.
 - ii. Offerors may quote their dealer cost, plus a percentage markup to be added to the cost. The percentage markup must remain firm during the life of the contract.
- B. Two (2) copies of the list upon which the discounts or markups are based shall be submitted with the Offer. All price lists identified in the Offer shall clearly include the Offeror's name and address, the solicitation number, prices, title of the discount and number, and the latest effective date of the price list. If the Offer is based on a discount or markup on a manufacturer's price list, the price list must also include the manufacturer's name, the manufacturer's latest effective date, and the manufacturer's price schedule. All price lists submitted become part of the Offer.

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- C. The price list may be superseded or replaced during the Contract term only if price revisions are the result of the manufacturer's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the revised list must be submitted to the Buyer in the Purchasing Office with the effective date of change to be at least 30 calendar days (30 unless a different period is inserted) after written notification. The City reserves the right to refuse any list revision.
- D. The discounts or markups on equipment rental, material, supplies, parts, and contract services shall be fixed throughout the term of the Contract, and are not subject to increase.
- E. Failure to submit written notification of price list revisions will result in the rejection of new prices being invoiced. The City will only pay invoices according to the last approved price list.

9. LIVING WAGES:

The City's Living Wage Program, Rule R161-17.14, is located at:
<http://www.austintexas.gov/edims/document.cfm?id=277854>

- A. The minimum wage required for all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract is \$15.00 per hour, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain solicitations in order to assure quality and continuity of service.
- B. The City requires Contractors submitting Offers on this Contract to provide a certification (**see the Living Wages Contractor Certification included in the Solicitation**) with their Offer certifying that all Contractor Employees (and all tiers of Subcontracting) directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$15.00 per hour. The certification shall include a list of all Contractor Employees (and all tiers of Subcontracting) directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.
- C. The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA).
- D. The Contractor shall provide to the Department's assigned Contract Manager with the first invoice, individual Employee Certifications for all Contractor Employees (and all tiers of Subcontracting) directly assigned to the contract. The City reserves the right to request individual Employee Certifications at any time during the contract term. Employee Certifications shall be signed by each Contractor Employee (and all tiers of Subcontracting) directly assigned to the contract. The Employee Certification form is available on-line at https://www.austintexas.gov/financeonline/vendor_connection/index.cfm.
- E. Contractor shall submit employee certifications for Contractor Employees (and all tiers of Subcontracting) annually on the anniversary date of contract award with the respective invoice to verify that employees are paid the Living Wage throughout the term of the contract. The Employee Certification Forms shall be submitted for Contractor Employees (and all tiers of Subcontracting) added to the contract and/or to report any employee changes as they occur.
- F. The Department's assigned Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records required in paragraph C above to verify compliance with this provision.

10. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:

- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or

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potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.

- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If an Offeror has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: <http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

11. **ACCD CONTRACTOR OR SUBCONTRACTOR FACILITY ACCESS REQUIREMENTS:**

Authorized ID and access to those acting as a Contractor or Contractor's Subcontractor who are providing services at Austin Convention Center Department (ACCD) must adhere to the security requirements defined below. Violation of the applicable requirements below may result in the Contractor or its Subcontractor to be removed from ACCD facility or property.

- A. Other than ACCD and in-house contractor employees, and unless other arrangements are made with the Contract Manager, persons conducting business with Austin Convention Center (ACC) are required to enter through the service entrance at the pedestrian gate on Red River St. and check-in at the Security Check-In inside the service yard or with the Security Control Center. Persons arriving at ACC may also enter through the Administrative Offices entrance on Cesar Chavez Street. Persons conducting business with Palmer Events Center (PEC) are required to enter through the garage service entrance and check-in with the PEC Security Control Office or PEC Administrative Offices. Any other means of access entry into the facilities are unauthorized.
- B. Contractors, Contractor's Subcontractors or others who are providing services at ACCD shall be issued Temporary Badge/Access, which may be an ACCD Photo or Non-Photo ID Badge.
- C. All persons not directly escorted by an ACCD employee must clearly display an access/ID device while on ACCD facility premises.
- D. Use of ACCD access/ID devices to access any part of ACCD facilities for non-business purposes (events, shows, etc.) is prohibited.
- E. Any ACCD employee may check an individual's status or contact Security Control Center whenever observing person(s) in non-public areas of ACCD facilities who are not being directly escorted by an ACCD employee or who are not displaying any required access/ID devices.
- F. Restricted areas of the facility with signs stating "Authorized Personnel Only" are off limits to all persons except those authorized.
- G. Unless authorized by ACCD Management, exterior access into ACCD facilities using keys is prohibited.
- H. Under no circumstances shall any person issued an access/ID device, allow another person entry into any ACCD facility using their access/ID device. This includes "piggy-backing" through access doors or gates. Any person with an ACCD ID badge or access device who allows another person to enter using their access privileges should bring the person directly to the Security Control Center to be checked-in.

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- I. Due to security and safety concerns, Contractors and Contractor's Subcontractors conducting business at ACCD, are not allowed to walk through the open service yard vehicle gates to enter or exit the service yards. Entry and exit should be by way of the designated pedestrian gates and walkway using appropriate access/ID devices and check-in procedures.
- J. Pedestrian traffic through ACCD's service yards and exhibit halls is restricted to authorized persons during event/show move-in and move-outs. Children under seventeen (17) are prohibited from ACCD service yards and exhibit halls during move-in and move-outs.
- K. During periods where there is no move-in or move-out traffic in the service yards, only persons with legitimate business needs are allowed into the service yards.
- L. Temporary badge/access devices issued to contractors, subcontractors or temporary workers must be returned to the Security Control Center at the completion of the ACCD work assignment. Non-photo temporary badges must be returned at the end of the employees work shift/assignment. Failure to return temporary badges/access devices at the completion of work assignments may lead to future ACCD facility access restrictions.

12. **WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID):**

- A. Access to the City Department building by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. Security badges will be issued by the Department for this purpose. The Contractor shall submit a complete list of all persons requiring access to the City building at least thirty (30) days in advance of their need for access. The City reserves the right to deny a security badge to any Contractor personnel for reasonable cause. The City will notify the Contractor of any such denial no more than twenty (20) days after receipt of the Contractor's submittal.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the security desk when entering or leaving the building and security badges must be on display at all times when in the building. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule. Security badges may not be removed from the premises.
- D. The Contractor shall provide the City's Contract Manager with a list of personnel scheduled to enter the building, seven days in advance. The list shall identify the persons by name, date of birth, driver's license number, the times that they will be inside the building and the areas where they will be working. Only persons previously approved by the City for the issuance of security badges will be admitted to the building.
- E. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.

13. **ECONOMIC PRICE ADJUSTMENT:**

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve (12) months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed

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ten percent (10%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.

- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract award and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.
- D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.
- i. The following definitions apply:
- (1) **Base Period:** Month and year of the original contracted price (the solicitation close date).
 - (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
 - (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
 - (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
 - (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.
- ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:
- (1) Utilize final Compilation data instead of Preliminary data
 - (2) If the referenced index is no longer available shift up to the next higher category index.
- iii. **Index Identification:** Complete table as they may apply.

Weight % or \$ of Base Price: 100%	
Database Name: PPI industry data for Bottled water manufacturing-Bottled water, not seasonally adjusted	
Series ID: PCU3121123121120	
<input checked="checked" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: N/A	
Description of Series ID: Bottled water manufacturing	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: All	

14. **INTERLOCAL PURCHASING AGREEMENTS:** (applicable to competitively procured goods/services contracts).
- A. The City has entered into Interlocal Purchasing Agreements with other governmental entities, pursuant to the Interlocal Cooperation Act, Chapter 791 of the Texas Government Code. The Contractor agrees to offer the same prices and terms and conditions to other eligible governmental agencies that have an interlocal agreement with the City.
- B. The City does not accept any responsibility or liability for the purchases by other governmental agencies through an interlocal cooperative agreement.

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15. **CONTRACT MANAGER**: The City reserves the right to designate a Contract Manager or designee, and this person shall serve as a point of contact between the City and the Contractor during the term of the contract. The City also reserves the right to change or update the Contract Manager or designee on as-needed basis. The City will provide the Contractor with a Contract Manager name within 30 days of the contract award date.

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

**CITY OF AUSTIN
SCOPE OF WORK (SECTION 0500)
FOR
DRINKING WATER DELIVERY SERVICE
SOLICITATION NUMBER: IFB 8200-SBR1000**

1.0 PURPOSE

This Invitation for Bid (IFB) is for the purchase and delivery of bottled purified drinking water, rented water dispensers, and cups for the City of Austin (City).

It is the City's preference to award a single contract for the purchase of these items; however, in the event that Bidders are unable to supply all the items specified, the City reserves the right to award multiple contracts based on individual line items or groups of items. A Successful Bidder may be awarded either the entire contract, the majority of the contract, select line items, or select groups of items.

This scope is intended to cover the requirements for drinking water delivery service, water dispensers, compostable or recycled content cups, and cup dispensers. City reserves the right to add or remove additional departments or locations as needed to the resulting contract without an amendment.

2.0 BACKGROUND

2.1 AUSTIN CONVENTION CENTER

At the Austin Convention Center Department (ACCD), water dispensers are placed throughout the buildings for visitors to drink water during events and shows. Water dispensers are set up at Austin Convention Center and the Palmer Event Center. The specifications for the containers and cups shall meet the requirements of ACCD's Ongoing Purchasing and Waste Policy including any updates to the policy issued via an addendum.

During the period of October 1, 2017 thru September 30, 2018 (the City Fiscal Year for 2018) ACCD purchased 6,750 5-gallon water bottles and 560 50-packs of cups. This is historical data and provided to assist Bidders with their bids. The City reserves the right to purchase more, or less, of these quantities.

2.2 AUSTIN FIRE DEPARTMENT

Austin Fire Department (AFD) uses the bottled water for the AFD Wellness Center for employees and potential employees to drink during physical training exercises. Employees of the AFD Warehouse also utilize the bottled water service as there is no water fountain in the warehouse area which is exposed to inclement weather conditions. AFD Investigations office utilizes the bottled water service for interviewees and other guests who do not have access to drinking water.

2.3 AUSTIN-TRAVIS COUNTY EMERGENCY MEDICAL SERVICES

Austin-Travis County Emergency Medical Services (ATCEMS) medics are often required to work in all types of conditions and austere environments without scheduled breaks. The ability to use bottled water is essential to ensure the physical well-being of medics and other Public Safety Departments (Fire, Police, etc.) at the scene of an emergency so that their performance does not deteriorate to the point where it affects the safety of any personnel or compromises the care provided.

Depending upon the incident and call volume, often medical personnel are assigned for long period of times without sustain breaks or opportunities for a sufficient break.

**CITY OF AUSTIN
SCOPE OF WORK (SECTION 0500)
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Standards for rehabilitation during large scale incidents, multi-jurisdictional events or circumstances of high call volume warrants the ready availability for hydration that bottle water provides. In addition, ATCEMS has various deployment teams in which requirements of personnel must be “self-sufficient” for periods upward of 72 hours if necessary.

2.4 AVIATION DEPARTMENT

At the City of Austin, Aviation Department (Austin-Bergstrom International Airport), water dispensers are placed in non-public areas of the terminal and in remote buildings or locations occupied by Aviation staff. Water is provided where no water fountains are available and/or where Aviation employees are assigned to work in areas of the airport campus for long period of times without the ability to access an alternative water source.

2.5 AUSTIN RESOURCE RECOVERY

Austin Resource Recovery (ARR) requires the bottled water for operators working at Hornsby Bend because there is no potable water available. The operators work in all types of extreme weather, and hydration is a safety concern.

3.0 CONTRACTOR'S REQUIREMENTS

3.1 CONTRACTOR'S RESPONSIBILITIES

The successful bidder, herein after referred to as “Contractor”.

The Contractor shall:

- 3.1.1 Provide water dispensers, bottled water, and compostable or recyclable with recycled content cups to various locations.
- 3.1.2 Furnish any and all equipment, labor, transportation and materials required for proper execution of this Contract.
- 3.1.3 Immediately notify the Contract Manager or designee upon detection of an existing or potentially hazardous condition while performing services under this Contract.
- 3.1.4 Provide a single, local point of contact (SPOC) (and a backup contact) to handle questions or problems that may arise. The Contractor shall provide the office number, email address, and cell phone number for the SPOC.
 - 3.1.4.1 During times the SPOC is unavailable (due to vacation, travel, etc., for example), the Contractor may provide a designee for the SPOC. The designee shall meet the same requirements as specified for the SPOC and shall have the same authority as the SPOC.
- 3.1.5 Contact the department's Contract Manager(s), within ten (10) business days after contract award, to determine products needed, the number of dispensers needed and to schedule delivery and equipment installation.

**CITY OF AUSTIN
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- 3.1.6 Provide a signed delivery ticket to the department's Contract Manager or designee for verification of the product that delivered during each delivery or as otherwise specified by the Contract Manager or designee.
- 3.1.7 Upon department's Contract Manager's request, provide itemized reports comprised of all orders placed including data regarding orders by type, price, quantity, equipment type, date, location and City department.
- 3.1.8 Notify the department's Contract Manager or designee at least two (2) business days before the scheduled delivery of any changes made to the order.
- 3.1.9 Notify the department's Contract Manager or designee at least two (2) business days if delivery cannot be made and needs to be rescheduled.
- 3.1.10 Understand and agree that the scheduling of City events take precedence over any other schedule(s) agreed to by the City and the Contractor. The Contractor shall not hold the City liable, financially or otherwise, if an alteration in the City schedule requires the City to reschedule services with the Contractor. The City will make every reasonable effort to immediately notify the Contractor of changes in the City schedule which may have an impact on any other schedule agreed to by the City and the Contractor.

3.2 OTHER RELATED SERVICES OR PRODUCTS

- 3.2.1 The City may require Contractor to provide additional related services or products that are not covered within this Scope of Work. In order to be paid for those additional services or products, provide the price you would charge the City on Section 0600, Bid Sheet.
 - 3.2.1.1 Pricing provided under "Other Related Services" section on Section 0600, Bid Sheet, will not be used in the evaluation of the bid but is for informational purposes only and there is no guarantee of purchase or use. Price list/sheet must be provided prior to award if pricing is off a price sheet.
- 3.2.2 The Contractor shall perform/provide other related services or products after the Contract Manager or designee authorizes such services or products in writing, by issuing a Delivery Order (DO). These related services or products shall be performed or provided in accordance with all provisions of this agreement.

3.3 WATER DISPENSING EQUIPMENT

The Contractor shall:

- 3.3.1 Provide cold and hot water dispensers.
- 3.3.2 Provide, at a minimum, cold water dispensing equipment.
- 3.3.3 Include in the unit price (Section 0600: Bid Sheet) all costs associated with the water dispensing equipment including installation of the equipment, removal of equipment, inspection, maintenance and the monthly rental cost.

**CITY OF AUSTIN
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SOLICITATION NUMBER: IFB 8200-SBR1000**

- 3.3.4 Have all equipment installed within one (1) business day per location.
- 3.3.5 Provide, at a minimum, an annual inspection of all rented water dispensers to ensure they are working properly at no additional cost to the City.
- 3.3.6 Provide maintenance on all rented water dispensers as-needed or upon request by the department's Contract Manager or designee at no additional cost to the City.
- 3.3.7 Provide replacement for nonfunctioning rented water dispensers within (2) two business days of being notified by the department's Contract Manager or designee and at no additional cost to the City.
- 3.3.8 Perform professional cleaning service to sanitize the water dispensing equipment upon written request by the Contract Manager or designee. The professional cleaning service shall be provided on an as-needed basis. The Contractor may be requested by the Contract Manager to sanitize rented and ACCD owned water dispensing equipment.
 - 3.3.8.1 Submit a list of chemicals and products to be used under this contract with the bid.
 - 3.3.8.2 Adhere to the following requirements for sustainability in cleaning and janitorial supplies and services:
 - 3.3.8.2.1.1 UL EcoLogo 2759, for hard-surface cleaners;
 - 3.3.8.2.1.2 EPA Safer Choice Standard; and/or
 - 3.3.8.2.1.3 Use cleaning devices that use only ionized water or electrolyzed water and have third-party-verified performance data equivalent to the other standards mentioned above (if the device is marketed for antimicrobial cleaning, performance data must demonstrate antimicrobial performance comparable to EPA Office of Pollution Prevention and Toxics and Design for the Environment requirements, as appropriate for use patterns and marketing claims).
 - 3.3.8.2.1.4 Use the provided on-site Orbio system located at the Austin Convention Center and the Palmer Events Center for water cleaning and dilution needs located at ACCD.
 - 3.3.8.2.1.5 Use concentrated version of chemicals with dilution control 1:8 or greater.
 - 3.3.8.2.1.6 Use Closed Loop Systems for Dilution (Dilution Control Systems) - The use of non-proprietary dilution systems that work with more than one manufacturer's product-line are preferred.

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3.3.8.2.1.7 Stream or course spray when using in spray bottles (NO misting).

3.3.9 Understand that the City reserves the right to purchase water dispensing equipment through this Contract or off-Contract, from a third party to be used in lieu of renting the equipment.

3.3.9.1 Make every effort to work closely with the City to seamlessly transition from rented equipment to purchased equipment. There shall be no interruption of services during the transition phase.

3.3.9.2 Not penalize the City through restocking fees, or other charges levied against the City in the event the City purchases its own equipment.

3.4 BOTTLED WATER

The Contractor shall:

3.4.1 Provide water in five (5) gallon sanitized, re-fillable/re-useable, and BPA-free bottles.

3.4.2 Provide, on an as needed basis, 16oz-17oz bottled water. Location and quantity will be provided two (2) business days in advance of delivery request.

3.4.3 Include in the unit price (in Section 0600: Bid Sheet) all costs associated with the five (5) gallon bottled water delivery, removal, and sanitization of empty bottles.

3.4.4 Contractor shall coordinate with designated Contract Manager at each location to establish delivery locations, dates and times for water delivery and pickup of empty bottles. ACCD deliveries shall be between the hours of 6am-10am.

3.4.4.1 Deliver water to ACCD facilities on a weekly and as-needed basis or as otherwise defined by the Contract Manager or designee.

3.4.4.2 Deliver water to AFD, ATCEMS, Aviation and ARR at a minimum bi-monthly basis or as otherwise defined by the Contract Manager or designee.

3.4.5 Remove empty bottles when delivering replacement bottles or within five (5) business days of request by the department's Contract Manager or designee, whichever date is earlier.

3.5 CUPS

The Contractor shall:

3.5.1 Provide compostable or recyclable with recycled content drink cups upon request by the department's Contract Manager or designee. The cups shall be compostable per Biodegradable Products Institute (BPI) or American Society for Testing and Materials (most current revision of ASTM 6400 and/or ASTM 6868) for compostability and/or biodegradability.

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SOLICITATION NUMBER: IFB 8200-SBR1000**

3.5.1.1 Contractor provided recyclable cups shall have at least 10% post-consumer recycled content and BPA-free plastic drink cups.

3.5.1.2 Under no circumstances shall the Contractor replace specified and accepted compostable cups or recyclable with other types of cups without prior written approval from the department's Contract Manager or designee. Written approval shall be in the form of an Amendment to this Contract.

3.5.2 Provide cups that have a heat tolerance of at a minimum 105 degrees Fahrenheit.

3.5.3 Provide cups that are compatible with the cup dispensers.

3.5.4 Provide cups at a minimum of 50 count per pack.

3.5.5 Provide cups by the case (in bulk).

3.6 SECURITY

The Contractor shall:

3.6.1 Never enter a restricted or operational area of the airport without the direct permission of (ABIA) or any governmental bodies having jurisdiction. Access to the premises must be strictly controlled.

3.6.2 Display company/employer-issued photo ID at all times when in City's buildings. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule.

3.6.3 Assumes full liability from any such unauthorized incursions.

3.6.4 Comply with all other security requirements imposed by the City including the security requirements in Section 0400: Supplemental Purchase Provisions.

3.6.5 Ensure that all employees and subcontractors comply with all contractual requirements, including security requirements.

3.7 START OF SERVICE

Upon award and execution of an agreement, the Contractor shall:

3.7.1 Make every effort to work closely with the incumbent Contractor to seamlessly transition services. There shall be no interruption of services during the transition phase.

3.7.2 Work with the Contract Manager(s) to identify a transition plan to change out equipment.

3.7.3 Commence the transition of equipment within ten (10) business days of Contract Manager's or designee's approval and installation shall be completed within one (1) business day per location.

**CITY OF AUSTIN
SCOPE OF WORK (SECTION 0500)
FOR
DRINKING WATER DELIVERY SERVICE
SOLICITATION NUMBER: IFB 8200-SBR1000**

- 3.7.4 Receive prior approval from the Contract Manager(s) or designee before disposing water from opened 5-gallon bottles.
- 3.7.5 Not dispose of any unopened 5-gallon bottles
- 3.7.6 Work with the Contract Manager(s) to remove equipment to a designated storage area within the City, in the event that incumbent Contractor refuses to assist or work with Contractor to transition services.

3.8 CONTRACT CLOSE-OUT

The Contractor shall:

- 3.8.1 Work with the Contract Manager(s), sixty (60) calendar-days prior to the expiration of the contract, to inventory and report all equipment being rented. The inventory report shall include the equipment type, location of equipment, and quantities.
- 3.8.2 Contact the Contract Manager(s), forty-five (45) calendar-days prior to the expiration of the contract, to coordinate the removal of equipment and proposed pick up date.
- 3.8.3 Contact the Contract Manager(s), thirty (30) calendar days prior to the expiration of the contract, and to confirm scheduled equipment pick up date.
- 3.8.4 Contact the Contract Manager(s), thirty (30) calendar days prior to the expiration of the contract, to verify the quantities of any unopened water containers, cups, cup dispensers, etc., if the succeeding Contractor's equipment requires different water containers or other equipment.
- 3.8.5 Buy-back all unopened water containers and other equipment at the full price for which they were purchased by the City.
- 3.8.6 Ensure no disruption of services as equipment is removed from the City.
- 3.8.7 Acknowledge that the City reserves the right to withhold payment of final invoices in the event it fails to comply with the items of Contract Close-Out.

3.9 TRANSPORTATION AND PARKING

The Contractor shall:

- 3.9.1 Provide all transportation required to perform the work. Contractor shall park its vehicles in areas designated by the City at the Contractor's expense, if any. All vehicles shall be clearly marked with the Contractor's or subcontractor's name on both sides of each vehicle. Magnetic signs are acceptable.
- 3.9.2 Not separate charge for administrative, overhead, per diem and transportation (i.e. mileage and fuel) costs. These expenses shall be included in the bid rates.

**CITY OF AUSTIN
SCOPE OF WORK (SECTION 0500)
FOR
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SOLICITATION NUMBER: IFB 8200-SBR1000**

4.0 CITY'S RESPONSIBILITIES

The City will:

- 4.1.1 Provide, within five (5) business days after contract award, a list of department's Contract Manager(s) or designee to contact and determine each department product needs and schedule delivery and installation of equipment.
- 4.1.2 Notify the Contractor, within two (2) business days of scheduled delivery, if products are needed in addition to the regular product delivery.
- 4.1.3 Notify the Contractor, within two (2) business days of scheduled delivery, if any replacement for nonfunctioning water dispensers will need to be delivered.

5.0 OMISSIONS

It is the intention of this scope of work to acquire a complete water delivery service of the type described, with all necessary components delivered, installed, and ready for full use. All items or services omitted from the specifications which are clearly necessary for this service shall be considered a requirement although not directly specified or called for herein.

6.0 ATTACHMENTS

- 6.1 Attachment A – ACCD's Ongoing Purchasing and Waste Policy

**CITY OF AUSTIN
SECTION 0600 - BID SHEET
Drinking Water Delivery Service**

IFB No.: IFB 8200-SBR1000

BUYER: Sarah Ramos

Special Instructions: Offerors must use this Bid Sheet to submit pricing. Be advised that altering the bid sheet or taking exceptions to any portion of the solicitation may jeopardize acceptance of your Offer.

The quantities noted below are estimates and not a guarantee of actual volume. The City does not guarantee the purchase of the quantities listed, actual purchases may be more or less. Quantities are provided as a guide based on historical or anticipated usage. Order quantities will be as-needed and specified by the City for each order.

A bid of "0" (zero) will be interpreted by the City as a no-charge (free) item and the City will not expect to pay for that item. A bid of "no bid" or no response (space left blank) will be interpreted by the City that the Offeror does not wish to bid on that item. Be advised, a "no bid" or no response may be considered as non-responsive and may result in disqualification of the bid.

Prices offered on the bid sheet shall be all inclusive of fees not expressly allowed in the scope of work. The Offeror shall not charge separately for administrative, overhead, per diem, and shipping or transportation costs (travel time, fuel surcharges, mileage, stop-fee, etc.) to deliver services or items to the Austin, Texas area. The Offeror shall provide all tools, labor, travel, and equipment necessary to perform the services required under this contract.

The City reserves the right to award a single contract based on overall low cost or multiple awards based on individual or categories/groups of specific line items, cost, or any criteria or combination deemed most advantageous to the City.

SECTION 1: BOTTLED WATER DELIVERY

ITEM NO.	ITEM DESCRIPTION	ANNUAL ESTIMATED QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE (Est. Qty x Unit Price)
1	5-Gallon BPA-free refillable bottled water. Price is all inclusive of pick-up, sanitization, and delivery services as stated in Section 0500.	12,000	PER 5 GALLON BOTTLE	\$ 4.49	\$ 53,880.00
2	BPA-free Bottled Drinking Water (16 - 17oz bottles) For Emergency Purpose Use by any City Department	300	PER CASE	\$ 4.49	\$ 1,347.00
3	5-Gallon Bottle Deposit Fee (for lost bottles only)	24	PER BOTTLE	\$ 6.00	\$ 144.00
SECTION 1 TOTAL				\$	55,371.00

SECTION 2: CUPS

ITEM NO.	ITEM DESCRIPTION	ANNUAL ESTIMATED QUANTITY	SIZE	UNIT	UNIT PRICE	EXTENDED PRICE (Est. Qty x Unit Price)
4	Compostable drinking cups meeting specification as stated in Section 0500	10	7 Oz.	PACK OF 50	\$ -	\$ -
		200	7 Oz.	2000/Case	\$ -	\$ -
		500	9 OZ	PACK OF 50	\$ -	\$ -
		200	9 OZ	2000/Case	\$ -	\$ -
5	Post-consumer recycled content and BPA-free plastic cups meeting specification as stated in Section 0500	10	7 Oz.	PACK OF 50	\$ -	\$ -
		100	7 Oz.	1000/Case	\$ -	\$ -
		300	9 OZ	PACK OF 50	\$ 2.99	\$ 897.00
		100	9 OZ	1000/Case	\$ 55.80	\$ 5,580.00

CITY OF AUSTIN
SECTION 0600 - BID SHEET
Drinking Water Delivery Service

SECTION 2 TOTAL

\$

6,477.00

CITY OF AUSTIN
SECTION 0600 - BID SHEET
Drinking Water Delivery Service

SECTION 3: WATER DISPENSING EQUIPMENT

ITEM NO.	ITEM DESCRIPTION	MONTHLY ESTIMATED QUANTITY	UNIT	UNIT PRICE	EXTENDED PRICE * (see instructions below)
6	Monthly Rental Price for 5-Gallon Bottled Water Dispensing equipment Hot & Cold Water Dispensers	1 - 25	PER MONTH	\$ 2.50	\$ 750.00
		26 - 50		\$ 2.50	\$ 1,500.00
		51 - 100		\$ 2.50	\$ 3,000.00
7	Monthly Rental Price for 5-Gallon Bottled Water Dispensing equipment Room Temperature & Cold Water Dispensers	1 - 25	PER MONTH	\$ 2.50	\$ 750.00
		26 - 50		\$ 2.50	\$ 1,500.00
		51 - 100		\$ 2.50	\$ 3,000.00
			SECTION 3 TOTAL		\$ 10,500.00

* To calculate the extended price, take the highest count for each quantity break and multiply by the unit price x 12.
For example, quantity break 1-25 with a unit price of \$1.00 will be calculated as 25 x \$1.00 = \$25 x 12 = \$300.

TOTAL BID (SECTIONS 1-3)	\$ 72,348.00
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SECTION 4: OTHER RELATED SERVICES OR PRODUCTS

For Informational Purposes Only: The City may require Contractor to provide other related services or products as they relate to this Contract. In order to be paid for those services or products, provide the price you would charge the City. This information will not be used in the evaluation of the bid, but is for informational purposes only and there is no guarantee of purchase.

ITEM NO.	ITEM DESCRIPTION	UNIT OF MEASURE	% DISCOUNT OR FEE
8	Cleaning Service for Water Dispensing equipment (Rented or City Owned on as-needed basis)	0%	\$ 59.99
9	Other: (Bidder to Specify - may be \$ or % disc.) Delivery Fee		\$ 6.95
10	Other: (Bidder to Specify - may be \$ or % disc.)		
11	Other: (Bidder to Specify - may be \$ or % disc.)		

* Extended Price shall be calculated by Bidder: \$20,000 - % Discount from MSRP's List Price = Extended Price (Bidder should provide additional information, including a price sheet/price schedule/catalog with additional products and services available through the percentage discount listed above).

CITY OF AUSTIN
SECTION 0600 - BID SHEET
Drinking Water Delivery Service

Other Bid Requirements:

☐ Attach a list of chemicals and products to be used under this contract.

DELIVERY METHOD:

- ☐ Common Carrier (ie. FedEx/UPS)
- ☒ Vendor's Private Delivery
- ☐ Other: _____

COMPANY NAME: _Nestle Waters North America Inc.

EMAIL ADDRESS: Mark Miller

**CITY OF AUSTIN
SECTION 0600 - BID SHEET
Drinking Water Delivery Service**

IFB No.: IFB 8200-SBR1000

BUYER: Sarah Ramos

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CITY OF AUSTIN
SECTION 0600 - BID SHEET
Drinking Water Delivery Service

SECTION 2 TOTAL

\$

6,477.00

CITY OF AUSTIN
SECTION 0600 - BID SHEET
Drinking Water Delivery Service

SECTION 3: WATER DISPENSING EQUIPMENT

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		51 - 100		\$ 2.50	\$ 3,000.00
			SECTION 3 TOTAL		\$ 10,500.00

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TOTAL BID (SECTIONS 1-3)	\$ 72,348.00
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* Extended Price shall be calculated by Bidder: \$20,000 - % Discount from MSRP's List Price = Extended Price (Bidder should provide additional information, including a price sheet/price schedule/catalog with additional products and services available through the percentage discount listed above).

CITY OF AUSTIN
SECTION 0600 - BID SHEET
Drinking Water Delivery Service

Other Bid Requirements:

☐ Attach a list of chemicals and products to be used under this contract.

DELIVERY METHOD:

- ☐ Common Carrier (ie. FedEx/UPS)
- ☒ Vendor's Private Delivery
- ☐ Other: _____

COMPANY NAME: _Nestle Waters North America Inc.

EMAIL ADDRESS: Mark.miller@waters.nestle.com

Section 0605: Local Business Presence Identification

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm	Nestle Waters North America Inc	
Physical Address	16420 N Hwy #35 Austin, TX	
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	<input type="checkbox"/> No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	<input type="checkbox"/> Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	<input type="checkbox"/> No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----	----

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

Section 0700: Reference Sheet

Nestle Waters North America Inc.

Responding Company Name _____

The City at its discretion may check references in order to determine the Offeror's experience and ability to provide the products and/or services described in this Solicitation. The Offeror shall furnish at least 3 complete and verifiable references. References shall consist of customers to whom the offeror has provided the same or similar services within the last 5 years. References shall indicate a record of positive past performance.

- | | |
|---------------------------|----------------------------------------------|
| 1. Company's Name | McLane Southwest |
| Name and Title of Contact | Mike Soden - DC Manager |
| Project Name | Delivery of Bottled Water |
| Present Address | 2828 Industrial Blvd. |
| City, State, Zip Code | Temple, TX 76501 |
| Telephone Number | (254) 770-2965 Fax Number (254) 770-2838 |
| Email Address | mike.soden@mclaneco.com |
| | |
| 2. Company's Name | University of Texas |
| Name and Title of Contact | George Arredondo - Facilities |
| Project Name | Delivery of Bottle Water |
| Present Address | 2100 San Jacinto Blvd |
| City, State, Zip Code | Austin, TX 78712 |
| Telephone Number | (512) 232-4130 Fax Number (512) 232-8557 |
| Email Address | george.arredondo@athletics.utexas.edu |
| | |
| 3. Company's Name | Texas State University |
| Name and Title of Contact | Dan Alden - Director Procurement |
| Project Name | Delivery of Bottled Water |
| Present Address | 601 University Dr. JC Kellum Bldg 527 |
| City, State, Zip Code | San Marcos, TX 78666 |
| Telephone Number | (512) 245-2521 Fax Number (512) 245-2393 |
| Email Address | danalden@txstate.edu |

City of Austin, Texas

Section 0800

NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin

Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

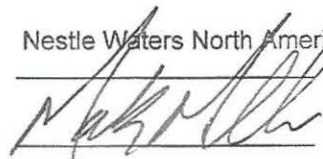
The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 25 day of January, 2019

CONTRACTOR
Authorized
Signature

Title

Nestle Waters North America Inc.



Key Account Development Mgr.

Section 0815: Living Wages Contractor Certification

Pursuant to the Living Wages provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees of the Prime Contractor and all tiers of subcontractors directly assigned to this City contract a minimum Living Wage equal to or greater than \$15.00 per hour.

- (1) The below listed individuals are all known employees of the Prime Contractor and its subcontractors who are directly assigned to this contract, and all are compensated at wage rates equal to or greater than \$15.00 per hour:

Employee Name	Employer	Prime or Sub	Your Normal Rate	Employee Job Title
Route Sales Rep	Nestle Waters	Prime	greater than \$15.00	Route Sales Rep
Key Acct Mgr	Nestle Waters	Prime	greater than \$15.00	Key Acct Mgr.

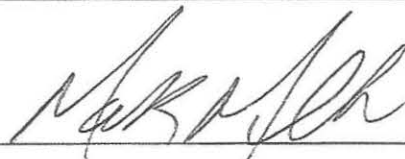
- (2) All future employees of both the Prime Contractor and all tiers of subcontractors directly assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$15.00 per hour.
- (3) Our firm will not retaliate against any employee of either the Prime Contractor or any tier of subcontractors claiming non-compliance with the Living Wage provision.

A Prime Contractor or subcontractor that violates this Living Wage provision shall pay each of its affected employees the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision by either the Prime Contractor or any tier of subcontractor, or fraudulent statements made on this certification, may result in termination of this Contract for Cause, subject the violating firm to possible suspension or debarment, or result in legal action.

I hereby certify that all the listed employees of both the Prime Contractor and all tiers of subcontractors who are directly assigned to this contract are paid a minimum Living Wage equal to or greater than \$15.00 per hour.

Contractor's Name: Nestle Waters North America Inc

Signature of Officer
or Authorized
Representative:



Date: 1-25-2019

Printed Name: Mark Miller

Title: Key Account Development Manager

Section 0835: Non-Resident Bidder Provisions

Company Name Nestle Waters North America Inc.

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: Non-Resident Bidder

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: No Which State: Connecticut

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: _____

Section 0900: SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM**

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form

SOLICITATION NUMBER: IFB 8200 SBR1000

SOLICITATION TITLE: Drinking Water Delivery Service

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions:

- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
b.) Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. **Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.**

☒ **NO, I DO NOT intend to use Subcontractors/Sub-consultants.**

Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

☐ **YES, I DO intend to use Subcontractors /Sub-consultants.**

Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information			
Company Name	Nestle Waters North America Inc		
City Vendor ID Code			
Physical Address	16420 N Hwy #35		
City, State Zip	Austin, TX 78728		
Phone Number		Email Address	mark.miller@waters.nestle.com
Is the Offeror City of Austin M/WBE certified?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES Indicate one: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture		

Offeror Certification: I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WBE Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed **Subcontracting/Sub-Consulting Utilization Form**, and if applicable my completed **Subcontracting/Sub-Consulting Utilization Plan**, shall become a part of any Contract I may be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to add Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit the **Request For Change** form to add any Subcontractor(s) to the Project Manager or the Contract Manager for prior authorization by the City and perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form.

Mark Miller Key Account Development Manager

Name and Title of Authorized Representative (Print or Type)

Signature/Date

Section 0905: SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM**

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form

SOLICITATION NUMBER: IFB 8200 SBR1000

SOLICITATION TITLE: Drinking Water Delivery Service

INSTRUCTIONS: Offerors who DO intend to use Subcontractors may utilize M/WBE Subcontractor(s) or perform Good Faith efforts when retaining Non-certified Subcontractor(s). Offerors must determine which type of Subcontractor(s) they are anticipating to use (CERTIFIED OR NON-CERTIFIED), check the box of their applicable decision, and comply with the additional instructions associated with that particular selection.

- ☐ I intend to use City of Austin CERTIFIED M/WBE Subcontractor/Sub-consultant(s).

Instructions: Offerors may use Subcontractor(s) that ARE City of Austin certified M/WBE firms. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to confirm if the Offeror's intended Subcontractor(s) are City of Austin certified M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's Subcontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)

- ☐ I intend to use NON-CERTIFIED Subcontractor/Sub-Consultant(s) after performing Good Faith Efforts.

Instructions: Offerors may use Subcontractors that ARE NOT City of Austin certified M/WBE firms ONLY after Offerors have first demonstrated Good Faith Efforts to provide subcontracting opportunities to City of Austin M/WBE firms.

STEP ONE: Contact SMBR for an availability list for the scope(s) of work you wish to subcontract;

STEP TWO: Perform Good Faith Efforts (Check List provided below);

STEP THREE: Offerors shall insert the name(s) of their certified or non-certified Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)
- All required documentation demonstrating the Offeror's performance of Good Faith Efforts (see Check List below)

GOOD FAITH EFFORTS CHECK LIST –

When using NON-CERTIFIED Subcontractor/Sub-consultants(s), **ALL** of the following **CHECK BOXES MUST** be completed in order to meet and comply with the Good Faith Effort requirements and all documentation must be included in your sealed Offer. Documentation CANNOT be added or changed after submission of the bid.

- ☐ **Contact SMBR.** Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.
- ☐ **Contact M/WBE firms.** Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the Austin Metropolitan Statistical Area, to provide information on the proposed goods and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)

PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form

SOLICITATION NUMBER: IFB 8200 SBR1000

SOLICITATION TITLE: Drinking Water Delivery Service

- ☐ **Follow up with responding M/WBE firms.** Offeror shall follow up with all M/WBE firms that respond to the Offeror's request. Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.
- ☐ **Advertise.** Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.
- ☐ **Use a Community Organization.** Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)

PROCUREMENT PROGRAM

Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form

SOLICITATION NUMBER: IFB 8200 SBR1000

SOLICITATION TITLE: Drinking Water Delivery Service

(Offerors may duplicate this page to add additional Subcontractors as needed)

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Company Name	
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Company Name	
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

SMBR Contact Information			
SMBR Contact Name	Contact Date	Means of Contact	Reason for Contact
		<input type="checkbox"/> Phone OR <input type="checkbox"/> Email	

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the Offeror ☐ HAS or ☐ HAS NOT complied with these instructions and City Code Chapters 2-9A/B/C/D, as amended.

Reviewing Counselor

Date

I have reviewed the completing the Subcontracting/Sub-Consultant Utilization Plan and ☐ Concur ☐ Do Not Concur with the Reviewing Counselor's recommendation.

Director/ Assistant Director or Designee

Date

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Sarah Ramos	PM Name/Phone	N/A
Sponsor/User Dept.	Convention Center	Sponsor Name/Phone	Kelly Jones 404-4351
Solicitation No	N/A	Project Name	Drinking Water Delivery
Contract Amount	\$84,000	Ad Date (if applicable)	N/A
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input checked="" type="checkbox"/> IFB – IDIQ <input type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source*			
<input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input checked="" type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement			
<input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
Provide Project Description**			
Bottled drinking water delivery services for various city departments as needed for special business needs. For example, AFD Wellness uses the water supply for employees who are undergoing fitness assessments. Other departments utilize the water stations for areas in their departments with no access to drinking water. Vendors will supply cups and water dispensers and have their own delivery trucks and staff.			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
Contract 8200 NA150000006 - no goals were applied.			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
96294-100%			
Sarah Ramos		11/9/2018	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY		
Date Received	11/9/2018	Date Assigned to BDC
11/9/2018		
In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:		
<input type="checkbox"/> Goals	% MBE	% WBE
<input type="checkbox"/> Subgoals	% African American	% Hispanic
	% Asian/Native American	% WBE

GOAL DETERMINATION REQUEST FORM

<input type="checkbox"/> Exempt from MBE/WBE Procurement Program	<input checked="" type="checkbox"/> No Goals
------------------------------------------------------------------	----------------------------------------------

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|--------------------------------------------------------------------|---------------------------------------------------------------------|
| <input type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

N/A

Subcontracting Opportunities Identified

N/A

Ahide Garcia

SMBR Staff

Signature/ Date

Ahide Garcia M

11/13/18

SMBR Director or Designee

Date

11/13/18

Returned to/ Date: